



U.S. Marine Corps (Timothy E. LeMaster)

HUMAN RIGHTS AND THE Commander

By BARRY R. McCAFFREY

The Armed Forces must respect human rights, not only on legal and ethical grounds, but also for practical reasons. Consequently, U.S. Southern Command seeks to imbue an awareness of the paramount importance of respecting and protecting human rights among U.S. military units and service members deploying to Central and South America under its aegis.

Those rights which every soldier, sailor, marine, and airman must respect are affirmed in common law, the Declaration of the U.N. General Assembly of 1948, and the Charter of the Organization of American States. Indeed, the governments of all states in the Americas—north, central, and south—have proclaimed their support of the following principles:

- Each individual has fundamental rights without distinction as to race, nationality, creed, or sex.
- The state shall respect the rights of the individual and the principles of universal morality.
- Social justice and social security are the bases for lasting peace.

Indeed, there is general agreement that our peoples have fundamental rights—rights that do not accrue from political or other forms of power but that spring from the nature of man.

Human Rights and Democracy

President Bill Clinton, whose values reflect absolute respect for the individual, offered his view on human rights before the U.N. General Assembly in September 1993:

Democracy is rooted in compromise, not conquest. It rewards tolerance, not hatred. Democracies rarely wage war on one another. They make reliable partners in trade, in diplomacy, and in the stewardship of our global environment. And democracies, with the rule of law and respect for political, religious, and cultural minorities, are more responsive to their own people and to the protection of human rights.

President Clinton's message was that "This is our motivation, this is what we stand for." Democracies, because of the consensual nature of politics and civil society, respect the fundamental rights of individuals. As Assistant Secretary of

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State for Human Rights and Humanitarian Affairs John Shattuck said in August 1993:

Human rights, democracy, and the rule of law are not the same. But they are complementary and mutually reinforcing. Fundamental rights are best guaranteed by basic institutions of democracy: a free press; an independent judiciary; a vibrant civil society; freely contested, transparent, and meaningful elections. Democracy—the rule of, by, and for the people—is only possible in a political and social order that fully respects the rights of each and every man, woman, and child in society. Governments that do not respect the rule of law are by definition lawless.

The most useful point here is that there is a linkage between human rights—this principle of the rule of law—and the fundamental values of democracy.

Sun Tzu, in discussing what laws mean to commanders, said in *The Art of War*, "Laws are regulations and institutions. Those who excel in war first cultivate their own humanity and justice and maintain their laws and institution." He stated further, "The commander stands for the virtues of wisdom, sincerity, benevolence, courage, and strictness."

In one form or another the works of every significant military thinker express these ideas of Sun Tzu. A commander's actions reflect his values. Although articulated in different terms, there seems to be universal recognition that military forces and their leaders must adhere to a higher moral code.

Facing the Past

One problem with which commanders must deal is the legacy of past actions. Each military institution has its own history. Some of it is painful and none of it will go away. A people, state, or army that cannot face the past cannot learn from it and may repeat it. Inevitably, the past blocks progress until it is confronted. That is just what our Armed Forces have tried to do.

Our most useful insights into human rights come from our history of human rights abuses. Many occurred in the small wars we fought on the frontier during the 19th century against Indian tribes. Some tragedies are more modern. The truth is that there have been incidents of human rights violations in every war in which we have fought. After all, we are dealing with imperfect people and their leaders.

The most notorious recent incident occurred at My Lai during the Vietnam War. We have learned much from that tragedy. Studying it was painful, but the Peers' report and the other investigative works that analyzed its root causes have enabled us to better protect and promote human rights.

Winning the War, Losing the Peace

Two opposites from American history furnish insights into establishing a proper command climate. General William Tecumseh Sherman observed:

We are not only fighting hostile armies, but a hostile people, and must make old and young, rich and poor, feel the hard hand of war, as well as their organized armies.

If the . . . [civilians in the South] raise a howl against my barbarity and cruelty, I will answer that war is war, and not popularity seeking. If they want peace, they and their relatives must stop the war.

In contrast, General Robert E. Lee said:

No greater disgrace can befall the army and through it our whole people than the perpetration of barbarous outrages upon the innocent and defenseless. Such proceedings not only disgrace the perpetrators and all connected with them, but are subversive of the discipline and efficiency of the army, and destructive of the ends of our movement.

We can learn much from the conduct of Sherman and Lee during the Civil War. There may not be a better contrast in treating noncombatants in American military history than that posed by these two commanders. There is no doubt that Sherman waged total war on the South ruthlessly, much as the Germans did in Russia during World War II. Of course, he also won. But was his approach, making the "old and young, rich and poor, feel the hard hand of war, as well as their organized armies" the most effective course of action?

Nearly 130 years later, Lee is still revered as a man of integrity and principle. But he lost. Why then do his lessons have value for us today? Winning a war is a reasonably easy proposition although it involves energy, courage, violence, and skill. Winning the peace is far more difficult.

Sherman's barbarity fueled a century of bitterness in the South, some of which endures to this day. Lee, on the other hand, espoused values that were not and are not a military weakness. Those values are a source of constant strength since they preclude an army dissipating its strength on wanton acts of destruction and do not create a requirement to defend gains because of enduring hostility from a civilian populace. These are values that we can appreciate by examining our past.

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A Commander's Liability

There are two basic standards to which every commander must adhere, the *Medina* and the *Yamashita* standards. The former applies when a commander orders a crime committed or knows that a crime is about to be committed, has power to prevent it, and fails to exercise that power; the latter occurs when a commander should have known about a war crime and did nothing to stop it. (*Yamashita* assumes that a crime is part of a widespread pattern of abuse over a prolonged period. In such a scenario, a commander is presumed to have knowledge of a crime or to have abandoned his command.)

The *Medina* standard resulted from the failure by an American captain to prevent the murder of some 300 Vietnamese civilians at My Lai. It is one to which we now hold our military leaders. If a captain, colonel, or general knows of a human rights violation or a war crime and fails to take action, he will be held criminally liable. The *Yamashita* standard is named for the Japanese general who was tried and convicted following World War II for atrocities committed by troops

under his command in the Philippines. The court concluded that he failed to control the forces serving under him, particularly in Manila, and allowed them to ravage the civilian population. General Yamashita was executed for his role in those actions of brutality.

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The Cause of Abuse

The Armed Forces have come to learn that institutional problems contribute to human rights abuses. If one sees the following traits, the likelihood of human rights abuse increases:

- poor leadership
- poorly trained or ill-disciplined troops
- unclear orders or missions
- tendency to dehumanize the enemy
- high frustration level among troops
- poor understanding of the complexities of unconventional war
- high casualties

We have learned that the most common factors in human rights abuse are poor leadership and poorly trained or ill-disciplined troops. Units with poor leadership will have problems with human rights. Troops behave in combat as they do in training. If poorly trained and ill disciplined they cannot fight effectively. We saw that in the Iraqi army prior to Desert Storm and also under fire. We also know that such forces do not respect the rights of noncombatants, prisoners of war, or private property.

One thing that my division command sergeant major and I would not tolerate in the months which led up to the Gulf War was labeling Iraqis as less than human. We believed that tolerating such attitudes increased the chances that Iraqi soldiers would be treated inhumanely.

We also know that high friendly casualties lead to frustration, particularly when combined with gruesome injuries. Losses inflicted by an invisible enemy are especially difficult for an army trained to fight conventional forces. In such circumstances, typical of internal wars, we know that the temptation increases for soldiers to seek retribution on enemy civilians. Strong leadership then becomes more important.

Commanders must be on the lookout for these indicators. They must ensure that leaders at squad, company, and battalion levels can recognize and deal with them before an incident occurs. This must be done through effective human rights training to preclude a breakdown in leadership.

Avoiding Abuses

How do operational commanders go about avoiding human rights abuses? The answer to that question gives rise to both some obvious and not so obvious considerations.

We had a great debate in the 24th Infantry Division before the war against Iraq broke out. Our lawyers tried to persuade me that I could not state in an annex to the division order a directive that whoever committed a war crime would be arrested and sent back out of Iraq to Saudi Arabia. But the sense that the command sergeants major, colonels, and I had to uphold was that if a soldier mistreated prisoners or civilians—he would not be given the honor of continuing to fight. We would send him to the rear disgraced and in handcuffs. I am convinced that as professionals we have to make clear that there is no acceptable level of violence against civilians. There should be zero tolerance when it comes to abusing human rights. That must be the standard for everyone.

A great challenge for those of us who serve in uniform is addressing human rights training without suggesting that respect for an enemy, its soldiers, and civilians detracts from the central objective of winning the war. How can leaders explain that such respect actually contributes to military effectiveness? How do they instruct without being paternalistic? Commanders must sort this out since they have to engage their sergeants and captains and themselves about this challenge.

The initial rules of engagement for my division were published as a 12-page document.

They were impossible to understand unless you were a field grade officer with a law degree, desk, lamp, and time to think. They had little value for sergeants, tank company commanders, or brigade operations officers; so we explained that

rules of engagement (ROE) are not tools for the lawyer but rather the commander. They had to be expressed in a

way that was helpful to a 25-year-old captain or a 20-year-old private. So we put them on cards, made them simple, and did not state the obvious. The obvious is the Ten Commandments. Less obvious is not tampering with places of worship or not firing on built-up areas without permission from your battalion commander.

ROE must be written for easy use by soldiers and their combat leaders; but they must never put our forces at risk. We cannot place our troops in danger without providing adequate means of protection.

It is not always understood that soldiers treat civilians and prisoners as they are treated themselves. So if we show our own soldiers dignity and some sense of compassion under the rule of law, they are more likely to act similarly toward the civilian population.

The opening days of combat in a conflict are the most difficult. Young men and women do not know exactly what constitutes appropriate conduct. They wait for professionals to show them through example. That in turn is how the troops will act.

In Vietnam there were normally 70 to 130 men in my company. We believed that eventually every one of us would be killed or wounded. It was rare to serve a month as a lieutenant or six months as a soldier without becoming a casualty. In such an environment of enormous violence and danger I had another concern as an infantry commander. I knew that there were a few soldiers in my company who were like caged animals awaiting release. But the vast majority, because of the influence of family, school, church, and the Constitution, were incapable of committing human rights abuses. Only the potential criminals were waiting for a chance to strike. So the challenge is how to treat a unit honorably while guarding against criminals who are inside every military in the world. Our most important responsibility is to not allow any criminals into our officer corps.

Honorable Conduct Pays

Anyone who commands forces in combat knows that respect for the dignity of the people being protected as well as the dignity of soldiers pays off. Actions such as those perpetrated by German SS units in Ukraine during World War II—slaughtering, raping, and plundering—turn the people against the invader. And the same is true in internal stability operations and unconventional warfare. Adherence to the Geneva Convention, respect for dignity, and attention to human rights benefit operational commanders.

Which position is preferable, that of a Nazi commander facing the enmity of a nation or that of an allied commander in the Gulf War facing an army that would rather quit than fight and whose soldiers eagerly seek safety in surrender? Operational commanders can control to a certain extent which position their forces adopt. If they instill a code of conduct and a sense of discipline in subordinate leaders and units, their troops will have respect for all with whom they deal. Then we will not have abusive forces.

José San Martín observed that “[a] nation does not arm its soldiers for them to commit the indecency of abusing said advantage by offending the citizens who sustain them through their sacrifices.” The military spends very little time fighting. Instead, most of its energy goes toward preparing for war. In peacetime the military interacts continuously with civilians in recruiting new soldiers, living alongside local communities, purchasing goods and services, and participating in the national debate about what constitutes proper force structure, roles, and missions.

Our fellow citizens support the military when they hold us in high esteem. They form their opinions when their sons and daughters—the Nation’s soldiers, sailors, marines, and airmen—go home and tell families and friends how well they are treated in the military. Their opinions are also influenced when they come in contact with a soldier traveling on leave, pass a convoy on the road, or visit an installation. Finally, they form opinions when they see the military in action in a conflict or peaceful mission.

Consequently, our every action in peace or war affects the prestige of our institution. We must always protect our honor. A single incident such as My Lai will cause long-term damage to the Armed Forces.

JFQ

This article is adapted from an address presented at the U.S. Army School of the Americas on August 10, 1994.